

In

Department of the Treasury

Distr.  
Direct.

1100 Commerce St., Dallas, Texas 75242

Date: SEP 24 1992

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates you were incorporated on [REDACTED] in [REDACTED]. Your Articles of Incorporation state that you are organized exclusively for scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

You conduct a training program that provides for one year of post residency training in [REDACTED] surgery. Your training program has been approved by the [REDACTED]. Upon completion of your program, an individual has full accreditation for membership in the [REDACTED]. The individual is also eligible to take the "Board Exam" by virtue of completing your program.

Each year approximately [REDACTED] candidates apply for training in your program. One individual is selected each year to participate in your program. This individual is considered a "fellow". The selection is made by [REDACTED] who serves on your board of directors, and is also your president and primary instructor. [REDACTED] is the sole stockholder of [REDACTED] (REDACTED). You use the facilities, equipment and support staff of [REDACTED] at no charge. The fellow receives a stipend of \$[REDACTED] per month during the training.

As part of his training, the fellow is responsible for seeing and evaluating all patients who are selected for surgery at [REDACTED]. The fellow serves as first assistant to [REDACTED] on all surgical cases. Approximately [REDACTED] to [REDACTED] surgeries are performed each year. As his training progresses, the fellow is given primary responsibility for operating on [REDACTED] to [REDACTED] patients who choose to have surgery under the training program. The fellow participates in all postoperative care of patients who undergo surgery at [REDACTED]. The fellow maintains detailed records as he carries out routine postoperative evaluations and discusses his findings with [REDACTED] who reviews his recommendations and proposed treatment.



[REDACTED]

The fellow is responsible for carrying out clinical research during his year of fellowship training which should lead to presentation at the annual meeting of the [REDACTED] and publication in their journal. When the fellow makes his presentation at the meetings it is stated that he is responsible for the related research under your direction. The articles list [REDACTED] and the fellow as the authors and indicate their affiliation with [REDACTED]. No credit is given to you in the articles. However, you indicate that you will receive credit in future articles if you are granted tax exempt status.

The fellow is required to read a number of current journals and text and to review these articles and books with [REDACTED]. The fellow also studies in preparation for taking his examination for certification by the [REDACTED]. By the completion of his year of training, the fellow is generally adequately trained to begin his own practice [REDACTED].

You also conduct several seminars each year which are open to licensed physicians and dentists. Typically, the seminars include live surgery, guest lecturers and laboratory work. The seminars are publicized through mailings to all members of the [REDACTED], prior attendees, and other physicians who have asked to be added to your mailing list or have shown an interest in your activities. The topics of the seminars are selected by [REDACTED]. The seminars take place at [REDACTED]. There is no charge to you for the use of [REDACTED]'s facility, equipment or supporting office staff other than overtime paid to supporting office staff when the seminars are in session. You do incur expenses for office and operating room supplies, anesthesia, and transportation of guest lecturers. You provide partial and full scholarships to doctors in residency programs at recognized medical schools to attend your seminars.

The patients of [REDACTED] who participate in the training program or the live surgery portion of the seminars may receive their surgery at either reduced cost or no cost. However, the patient is required to pay the regular cost for the [REDACTED] usage and the cost of providing anesthesia services. The criteria used to select the patients include financial need, type of surgery, urgency of the surgery, and need of a patient to be utilized in the training program or seminar.

[REDACTED] is the only doctor in the [REDACTED] area specializing in [REDACTED] surgery. However, there are other doctors in the area who carry out [REDACTED] surgery as a part of their practice. The research, training and financial assistance programs are currently open to those doctors. A limited number of patient referrals have been accepted from these doctors and some of the patients have received financial assistance for surgery.

As noted above, [REDACTED] serves on your board of directors, and is your president and primary instructor. [REDACTED] is the sole stockholder of [REDACTED]. [REDACTED] receives no compensation from you.

[REDACTED] serves on your board of directors and is your Chief Financial Officer. She is the wife of [REDACTED] and the mother of [REDACTED]. [REDACTED] receives no compensation from you.



\_\_\_\_\_ serves on your board of directors and is your Vice President. He is the son of \_\_\_\_\_ and \_\_\_\_\_. He is not currently active in your day to day operations. \_\_\_\_\_ receives no compensation from you.

\_\_\_\_\_ is your Secretary. \_\_\_\_\_ is the owner of \_\_\_\_\_. \_\_\_\_\_'s firm provides accounting services and tax preparation work for \_\_\_\_\_ and you \_\_\_\_\_. \_\_\_\_\_ receives no compensation from you individually, but his firm is paid for the services it provides to you.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable...or educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively- for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(d)(1) In general. (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."



[REDACTED]

"(d)(5)(i) Scientific defined. Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest. Therefore, the term "scientific", as used in section 501(c)(3), includes the carrying on of scientific research in the public interest."

"(d)(5)(iv) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under section 501(c)(3) as a "scientific" organization if such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in section 501(c)(3)."

In Revenue Ruling 69-266, 1969-1 CB 151, an organization was formed and controlled by a doctor engaged in the practice of medicine. The organization "hired" the doctor to conduct "research programs" which consisted of the doctor examining and treating patients. The organization charged the patients the prevailing fees for services rendered. In return for his services, the doctor received a small salary, a paid vacation, a pension plan, free health and life insurances, "scholarships" for his children, and the use of a personal residence and automobile. The organization's income, after payment of these amounts, was used to expand its facilities. It was determined in the ruling that the operation of the medical practice by the organization did not differ significantly from the private practice of medicine for profit. The organization was operated by its creator essentially as an attempt to reduce his personal Federal income tax liability while still enjoying the benefits of his earnings. The organization did not qualify for exemption because its primary function was to serve the private interest of its creator rather than a public interest.

You are like the organization in Revenue Ruling 69-266. The fellow in your program examines and treats the patients of a private medical practice controlled by your creator. [REDACTED] receives fees from the patients seen by the fellow in this capacity; you receive no fees for the services performed by the fellow. The cost savings in salaries by [REDACTED] results in increased profits to [REDACTED]. Because the majority of the patients utilized in your program are patients of [REDACTED] your primary function is to serve the private interest of your creator, the owner of [REDACTED]. You do not qualify for exemption because you serve a private rather than a public purpose as described in Income Tax Regulations section 1.501(c)(3)-1(d)(1).

Revenue Ruling 69-526, 1969-2 CB 115, describes an organization formed by a group of physicians specializing in heart disease to research the cause and to publish treatments of heart defects which qualified for exemption under section 501(c)(3) of the Code. The creators conducted their medical practices apart from the organization's research program. Although their private patients were accepted for study on the same criteria as other patients, the majority of the organization's patients had no prior contact with the creators. The organization's facilities are maintained separately from the facilities of its physician-creators and are used exclusively for the organization's research. If an individual's condition fell within the scope of the organization's research goals, he was accepted without regard to his



ability to pay. The organization received exemption because it served a public rather than a private interest as required by Income Tax Regulations section 1.501(c)(3)-1(d)(5).

When asked to compare your activities to those of the organization described in Revenue Ruling 69-526, you stated that patients are referred to you by interested physicians, friends and relatives who are concerned about the physical appearance and mental self image of the patient. You also indicated that contributions from patients are voluntary and do not cover the actual cost of the surgical services performed.

While there are some similarities between you and the organization described in Revenue Ruling 69-526, there are also substantial differences. All of the individuals participating in your research are patients of [REDACTED]. In the ruling, a majority of the patients were from outside the doctors' private practices. The fees charged to the patients participating in your program are reduced because they have agreed to participate in the research program, not because of their financial circumstances. Credit for the conduct of the research and presentation of the results is given to [REDACTED] and the various individual fellows. You have performed research indirectly for your creator, [REDACTED]. Per Income Tax Regulations section 1.501(c)(3)-1(d)(5), you are not organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under section 501(c)(3) as a "scientific" organization because you perform research only for persons who are (directly or indirectly) your creators and which are not described in section 501(c)(3).

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code, and you are required to file Federal Income Tax Returns on Form 1120.


If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

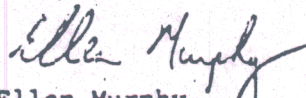
If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).



  
If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Ellen Murphy  
Acting District Director

Enclosures:  
Publication 892  
Form 6018